

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

**IN RE ST. JUDE MEDICAL, INC.,  
SILZONE HEART VALVES PRODUCTS  
LIABILITY LITIGATION**

:  
:  
:     **MDL DOCKET NO. 1396**

**JOINT STATUS CONFERENCE REPORT**

**(Status Conference-- August 27, 2002, 12:30 p.m.)**

The parties have met and conferred and submit the following status report to the Court.

**1.     STATUS OF CLASS CERTIFICATION MOTION**

Plaintiffs filed and served their motion for class certification, including supporting Memorandum of Law and Appendix, on May 3, 2002. Defendants filed and served their opposition thereto on June 17, 2002. Plaintiffs filed and served their Reply Memorandum and supporting papers on August 16, 2002. Defendants, by letter to the Court dated August 21, 2002, object to Plaintiffs' Reply and seek leave to file a response to same. Plaintiffs have responded to Defendants' objections in a letter to the Court dated August 23, 2002.

The hearing on the class certification motion is scheduled for 1:30 p.m., September 10, 2002. At this Status Conference, the parties seek the guidance of the Court on the protocol for the class certification hearing.

**2.     DISCOVERY MATTERS**

**A.     Plaintiffs' Request for Certain Tissue Photographs**

Plaintiffs have requested that Defendants produce all photographs (including microphotographs) generated in connection with all animal studies related to Salome, including,

without limitation, all tissue photographs. Defendants have agreed to produce such photographs. Defendants are attempting to produce all such photographs in CD-ROM format by Friday, August 23, 2002.

**B. Plaintiffs' Request for Certain Pathology Slides**

Plaintiffs have also requested that Defendants produce all pathology slides generated in connection with all animal studies related to Salome. Although Defendants have agreed in principle that Plaintiffs and their experts are entitled to conduct an independent review of such slides, Defendants have refused to agree to simply ship the slides to Plaintiffs' consultant. Plaintiffs are advised that the sharing and sending out of pathology slides is routine in the field of pathology; furthermore, slides of this nature are routinely produced in various sorts of litigation, including medical malpractice litigation. Plaintiffs do not see a significant logistical barrier to the delivery of all such slides to Plaintiffs' consultant. Defendants have informed Plaintiffs that Defendants will not agree to a plan which calls for Defendants to simply ship the slides to Plaintiffs' experts. Defendants' position is that these slides are important evidence in the case and that appropriate steps must be taken to ensure that the slides are not lost, damaged or destroyed during this process. To this end, Defendants have offered to make the slides available in St. Paul, Minnesota for review by plaintiffs' consultant. Defendants have also advised plaintiffs that they are amenable to considering an alternative protocol that addresses defendants' concerns. The parties have reached an impasse on this issue and request the Court's instruction on this matter.

### **C. Depositions and Plaintiffs' Motion to Compel Certain Testimony**

Plaintiffs took the depositions of Spire employees Dr. Iran Siobhan's and Ray Bricault on August 7 and 8, 2002. Plaintiffs' depositions of Spire's Eric Tobin and John Barry went forward on August 22 and 23, 2002.

In connection with a dispute that arose during the first two Spire depositions, Plaintiffs have moved for an order compelling Spire Corporation's former and current employees whose depositions are taken to testify concerning communications between St. Jude Medical's counsel and them during deposition preparation. Plaintiffs have submitted a memorandum in support of this motion dated on or about August 15, 2002. Defendants contend that St. Jude Medical and Spire have entered into a joint defense agreement which precludes plaintiffs from discovering any communications between Spire representatives and St. Jude Medical's counsel. Defendants intend to file and serve their response to plaintiffs' memorandum shortly.

Plaintiffs intend to proceed with the noticing of additional merits depositions shortly.

### **D. Status of Third Party Discovery**

The document production from the FDA is ongoing. St. Jude Medical represents that it has produced to plaintiffs all documents received from the FDA to date.

Plaintiffs have issued a document subpoena to Sulzer Carbomedics, Inc., another company that makes, among other things, heart valve products. Plaintiffs seek documents relating to, among other things, Sulzer Carbomedics' contacts with Spire Corporation concerning Spire's silver-coating technology. Plaintiffs are considering deposing the individual at Sulzer Carbomedics most knowledgeable concerning that company's decision not to develop Spire's silver-coating technology. An attorney for Sulzer Carbomedics has informed Plaintiffs that Sulzer does not intend to comply with the document subpoena, taking the position that it does

not comply with Rule 45 because it was not issued from the Western District of Texas. Plaintiffs believe the subpoena does comply with Rule 45 and other law governing MDL subpoenas and request the Court's assistance in this matter.

Plaintiffs have received and completed their initial review of several boxes of documents produced by advertising agency Koppes & Partners Advertising, Inc.

Plaintiffs believe additional third party discovery may be warranted and necessary and will be issuing same as appropriate.

#### **E. Confidentiality Designations**

In connection with the arrangements set forth in Pre-Trial Order No. 19 which gave St. Jude the opportunity to mark as confidential documents produced by third parties, St. Jude Medical has reviewed several CD-ROM's of documents, including documents produced by Dr. Jagdish Butany, Dr. Gary Grunkemeier, Dr. Stephen Goodman, and the University of Pittsburgh and marked many of such documents confidential. By correspondence dated August 20, 2002, Plaintiffs have informed St. Jude Medical that Plaintiffs do not agree that any of the documents on the Butany, Grunkemeier, or Goodman CD's in question are "confidential" within the meaning of Pre-Trial Order 4 or applicable law. Accordingly, it is Plaintiffs' position that the meet and confer period called for in Pretrial Order No. 4 has begun and that St. Jude Medical must bring a timely motion to maintain such confidentiality designations or the same shall be of no further effect. St. Jude Medical responds that Pretrial Order No. 4 requires that the parties engage in good faith efforts to meet and confer on confidentiality issues, and that the mere fact that plaintiffs may dispute some of the designations does not trigger St. Jude Medical's obligation to bring a motion.

### **3. PREEMPTION DISCOVERY AND MOTION SCHEDULING**

At the Court's instruction, Plaintiffs submitted, on July 22, 2002, a statement of discovery relevant to Defendants' affirmative defense of preemption. On August 7, 2002, Defendants filed their Response to Plaintiffs' Statement of Discovery Relevant to Opposition to St. Jude Medical's Motion for Summary Judgment on Preemption Grounds. On August 23, 2002, Plaintiffs submitted their Reply Memorandum concerning preemption discovery. Accordingly, on the basis of the parties' submissions and any discussion of the matter that may be heard at the status conference, the parties now seek the Court's guidance to resolve these issues.

### **4. STATUS OF PRETRIAL ORDERS**

#### **A. Proposed Scheduling Order re Case-Specific Fact Discovery**

Defendants' counsel has drafted and circulated for review and comment a proposed Pre-Trial Order addressing case-specific fact discovery, mandatory mediation, remand procedures, and related items.

#### **B. Proposed Protocol re Generic Experts**

Defendants' counsel has also drafted and circulated for comment a proposed order dealing with a protocol for designation and deposition of generic experts.

Plaintiffs' counsel are reviewing the foregoing items and the parties are in the process of meeting and conferring concerning the same.

### **5. CASE STATUS REPORT**

Defendants' most recent report on federal and state court filings was forwarded to the Court by electronic mail on or about August 13, 2002 and reflects a current count of

approximately 36 federal claims and 105 state claims. Since the submission of this report, two additional federal filings being transferred to the MDL have come to counsels' attention, bringing the count of federal claims to approximately 38 (of which 9 are class actions).

## **6. REPORT ON STATUS OF CANADIAN LITIGATION**

Pursuant to the Court's request at the previous status conference, Defendants' counsel will, beginning on October 1, 2002, begin submitting quarterly reports concerning the status of the Salome litigation in Canada.

### **ZIMMERMAN REED, P.L.L.P.**

Dated: August 23, 2002

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